



National Aeronautics and  
Space Administration  
Washington, DC 20546

# Procurement Notice

PN 04-82  
September 9, 2015

---

## REVISION OF 1803.104-70 RESTRICTIONS ON NASA PERSONNEL PARTICIPATING IN PROPOSAL EVALUATIONS OR SOURCE SELECTIONS

**PURPOSE:** To revise NASA FAR Supplement (NFS) 1803.104-70 regarding Conflicts of Interest (COI) for NASA employees serving on proposal evaluation teams or making source selection decisions and to make other changes to part 1803.

**BACKGROUND:** While the criminal statute, 18 USC § 208, entitled, “Acts Affecting a Personal Financial Interest,” proscribes financial conflicts of interest for Federal employees, it also enables the U.S. Office of Government Ethics (OGE) to prescribe by regulation exemptions for some holdings of securities. Recognizing that *de minimis* interests are too remote or inconsequential to affect the integrity of an employee’s service and do not present undue risk that a Federal employee’s decision-making would be influenced by such minor interests, the OGE allows *de minimis* exemptions from 18 USC § 208. When read in conjunction with OGE’s definition at 5 C.F.R. § 2640.102(r), 5 C.F.R. § 2640.202 permits holdings of \$15,000 of aggregate market value of publically traded common stock and certain other qualifying securities specified in the exemption. The OGE has also established exemptions at 5 C.F.R. § 2640.201(a) for interests in diversified mutual funds and diversified investment trusts. These exemptions were promulgated in 1996.

Notwithstanding the OGE’s *de minimis* exemptions, in 2007 NASA imposed an internal restriction applicable to its employees serving on proposal evaluation teams or making source selection decisions. The policy was issued via Procurement Notice (PN) 04-26, which added section 1803.104-70, Restrictions on NASA personnel participating in proposal evaluations or selection decisions, to the NFS. The policy restricted an employee from participating if the employee or the employee’s spouse or minor child had any direct or indirect interest in an entity participating or expected to participate in the acquisition. NASA’s policy of “zero tolerance” sought to remove all real or perceived conflict of interest. That policy disqualified NASA employees acting in the roles it covers from availing themselves of the OGE’s *de minimis* exemption at 5 C.F.R. § 2640.202 for holdings of securities.

During the intervening years, deviations to NASA's "zero tolerance" policy have demonstrated that *de minimis* financial holdings that would have been covered by the OGE exemption at 5 C.F.R. § 2640.202 do not unduly influence proposal evaluations or selection decisions. Furthermore, most evaluations and selection decisions do not have the potential to significantly affect the financial position of an employee that would qualify for this exemption.

Consistent with the Office of Management and Budget's guidance for agencies to conduct retrospective analysis, the Office of Procurement continuously reviews existing regulations and guidance to determine if there are opportunities to reduce burdens and alleviate administrative requirements without adversely affecting NASA's mission or performance. The Office of Procurement has determined that permitting NASA employees in these procurement and contracting roles to use OGE's *de minimis* exemption will reduce deviations from the NFS and facilitate NASA's source selection process without adversely affecting the evaluation of proposals or source selection decisions.

Consequently, NASA employees may participate in evaluating proposals and source selection decisions where the disqualifying financial interest arises from ownership by the employee, his spouse or minor children of securities qualifying under 5 CFR 2640.202(a) in entities participating or expected to participate in the acquisition having an aggregate market value not exceeding \$15,000.

**ACQUISITIONS AFFECTED BY CHANGES:** This guidance is applicable to all proposal evaluations and source selections initiated after the effective date of the PN.

**ACTION REQUIRED BY CONTRACTING OFFICERS:** Advise all Source Evaluation Board (SEB) participants and Source Selection Authorities (SSAs) of the revised policy. In addition, due to the seriousness of exceeding the *de minimis* limit of \$15,000, SEB participants and SSAs shall be reminded that the OGE conflict of interest rules still apply and may have criminal implications if the SEB participant or the SSA has a conflicting financial interest that exceeds the *de minimis* limit of \$15,000. SEB participants and SSAs shall consult with a NASA ethics official in their local Center Chief Counsel's office—or in the case of NASA Headquarters in the Office of General Counsel—concerning their individual circumstances.

**CLAUSE CHANGES:** None.

**PARTS AFFECTED:** Part 1803.

**TYPE OF RULE AND PUBLICATION DATE:** These changes do not have a significant effect beyond the internal operating procedures of NASA and do not have a significant cost or administrative impact on contractors or offerors, and therefore do not require codification in the Code of Federal Regulations (CFR) or publication for public comment.

**HEADQUARTERS CONTACT:** Paul Brundage, Contract and Grant Policy Division, 202-358-0481, email [Paul.D.Brundage@nasa.gov](mailto:Paul.D.Brundage@nasa.gov).

//s//

William P. McNally  
Assistant Administrator for Procurement

Enclosures

**PART 1803**  
**IMPROPER BUSINESS PRACTICES**  
**AND PERSONAL CONFLICTS OF INTEREST**

**Subpart 1803.1--Safeguards**

**1803.101 Standards of conduct.**

**1803.101-1 General.**

The statutory [**Federal conflict of interest**] prohibitions [**codified at 18 U.S.C. section 208**] and their application to NASA personnel are discussed in the Standards of Ethical Conduct for Employees of the Executive Branch, [5 CFR Part\[s\] 2635](#), [**Subpart D, and 2540**] ~~and the Supplemental Standards of Ethical Conduct for Employees of the National Aeronautics and Space Administration, [5 CFR Part 6901](#)~~. All NASA personnel involved in acquisitions shall become familiar with these statutory prohibitions. ~~Any questions concerning them shall be referred to legal counsel.~~ In addition to criminal penalties, the statutes provide that transactions entered into in violation of these prohibitions are voidable (18 U.S.C.[ **section**] 218).[ **The regulatory impartiality restrictions issued by the U.S. Office of Government Ethics (OGE) are provided in 5 CFR Part 2635, Subpart E. All NASA personnel involved in acquisitions shall become familiar with these regulatory restrictions.**]

\* \* \* \* \*

**1803.104-70 Restrictions on NASA personnel participating in proposal evaluations or selection decisions.**

For acquisitions of any dollar value, an employee may not participate in a proposal evaluation or selection decision if the employee[ **would not be in compliance with statutory U.S. Government ethics requirements, the impartiality regulations issued by U.S. Office of Government Ethics (OGE) at 5 CFR 2635, Subpart E, or any other applicable U.S. Government ethics requirements.** Participants should contact a NASA ethics official in their local Chief Counsel's office, or in the case of NASA Headquarters an ethics official in the Office of General Counsel, for advice on the application of these provisions], ~~or the employee's spouse or minor child, has any direct or indirect financial, beneficial, or employment interests in any company participating, or expected to participate, in the acquisition. Direct or indirect financial interests are determined through the employee filing of a Public or Confidential Financial Disclosure Report (SF 278 or OGE 450). Notwithstanding any information to the contrary on these forms, if the employee discloses a financial interest in any dollar amount, the employee is prohibited from participating in the proposal evaluation and selection process.~~